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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 08/898,537      | 07/22/97    | OZLUTURK             | F I-2-103.1US       |

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LM02/0427

EXAMINER

PHUNKULH, B

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 2732     | 7            |

**DATE MAILED:**

04/27/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

|                              |                                      |                                 |
|------------------------------|--------------------------------------|---------------------------------|
| <b>Office Action Summary</b> | Application No.<br><b>08/898,537</b> | Applicant(s)<br><b>Ozluturk</b> |
|                              | Examiner<br><b>Bob A. Phunkulh</b>   | Group Art Unit<br><b>2732</b>   |

Responsive to communication(s) filed on Jul 22, 1997

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 17-20 is/are allowed.

Claim(s) 1-16 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2732

## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
  
2. The drawings are objected to because black boxes are used in figure 3 which convey no meaning. Each black box should be descriptively labeled (with either well-known symbols, words or abbreviations applicable to each device) to facilitate an understanding of the figure and how they relate to the claims. The drawing should be more descriptively labeled as indicated by 37 CFR 1.84(g). Also, the figure numbers are not clearly labeled. Correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 2732

Regarding claim 1, it is not clear what it meant by "means for processing a communication for transmitting to said at least one subscriber unit" as cited in lines 13-14 i.e. the subscriber unit usually transmit data to base station.

Regarding claim 1, if "a plurality of data rates" cited in line 17 is the same as in line 10, please change it to --said plurality of data rates--.

Regarding claim 1, which cited "said communication" in line 15, it is not what this citation referred to i.e. this could be confuse with the communication made by base station. Also, in line 18 which cited "said determining means" could be confuse with the determining means of base station.

Regarding claim 4, it is not clear what it meant by "the selected data rate" in line 15. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2 is rejected under 35 U.S.C. 103(a) as being unpatentable over I et al. (US 5671218).

Art Unit: 2732

Regarding claims 1-2, I et al. disclose that a base station in a wireless digital CDMA communication comprising: a processor for determining the type of the particular wireless device (mobile station or subscriber station), wherein the type of the particular wireless device is defined at least in part by the data rate of the particular wireless device and for producing a control signal based on the type of the particular wireless device for controlling the particular wireless device; and a transmitting antenna 20 ( **see fig. 1 and claims 1-23**). I et al., further disclose, that the wireless devices 12 and 14 permit the devices to have the same data rates or different rates base on the quality of services requirements (**see col. 6 line 12 to col. 7 line 4**). I et al. did not explicitly teach that wireless devices also have means for determining the data rate. However, it would have been obvious to one having ordinary skill in the art at the time of invention was made to provide means for determining data rates to have compatibility between the base station and the subscriber station.

***Allowable Subject Matter***

7. Claims 17-20 are allowed.

***Conclusion***

**Any response to this action should be mailed to:**

Art Unit: 2732

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 305-9051, (for formal communications intended for entry)

**Or:**

(703) 308-5403 (for informal or draft communications, please label

“PROPOSED” or “DRAFT”)

Hand-delivered responses should be brought to Crystal Park II, 2021

Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bob A. Phunkulh** whose telephone number is (703) 308-8251. The examiner can normally be reached on Monday-Friday from 8:00 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor **Douglas W. Olms**, can be reached on (703) 305-4703. The fax phone number for this group is (703) 308-9051.

BAP

*BAP*

April 23, 1999

*Ajit Patel*  
**Ajit Patel**  
**Primary Examiner**